

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of J.D., J.D., and J.D.,	)	(Not For Official Publication)
persons under eighteen years	)	
of age.	)	Case No. 20051005-CA
_____	)	
J.D.,	)	F I L E D
	)	(February 2, 2006)
Appellant,	)	2006 UT App 29
	)	
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, Salt Lake Department, 134059  
The Honorable Andrew A. Valdez

Attorneys: Colleen K. Coebergh, Salt Lake City, for Appellant  
Mark L. Shurtleff and John M. Peterson, Salt Lake  
City, for Appellee  
Martha Pierce, Salt Lake City, Guardian Ad Litem

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Before Judges Bench, Billings, and Thorne.

PER CURIAM:

J.D. argues that appellate rules requiring a petition on appeal to be filed within fifteen days after the filing of the notice of appeal, and allowing only a limited extension, operate to violate his rights to due process. He contends that the rules denied him a fair opportunity to present his claim that trial counsel was ineffective because the petition must be filed before completion of the transcript. J.D. also challenges the requirement that trial counsel must raise issues of his or her ineffectiveness in the petition on appeal. See Utah R. App. P. 55(b) ("Claims of ineffective assistance of counsel do not constitute extraordinary circumstances [to allow withdrawal] but should be raised by trial counsel in the petition on appeal."). Because the petition on appeal must generally be filed prior to completion of a transcript, counsel cannot cite specific pages, but may alert the court to portions that could support the

client's belief that trial counsel was ineffective. We will review the petition on appeal, any response, and the record to determine whether we can resolve the case or should set the case for full briefing. See Utah R. App. P. 58(a). "If the issue to be briefed is ineffective assistance of counsel, the Court of Appeals may order the juvenile court to appoint conflict counsel . . . for briefing and argument." Utah R. App. P. 58(b). We conclude that the rules did not deprive J.D. of a fair opportunity to present his claims on appeal.

To prevail on an ineffectiveness claim, an appellant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced him or her, i.e., that there was a likelihood of a more favorable result in the absence of the deficient performance. See State v. Taylor, 947 P.2d 681, 685 (Utah 1997). The claim that trial counsel failed to conduct adequate cross-examination of the State's witnesses is not supported by the record. The caseworker, who was compelled to return to Utah and appear in person, largely through the efforts of J.D.'s counsel, was extensively cross-examined by counsel for both parents. We conclude that there was a legitimate strategic basis for not cross-examining the mother or her family, given the likelihood of negative testimony. Furthermore, cross-examination of the foster parents was most likely to produce additional evidence supporting the State's position on best interests. Finally, given the weight of the evidence supporting findings that J.D. moved to Texas during the reunification period, failed to complete the requirements of the service plan, did not financially support the children while they were in State custody, failed to visit the children after February 2005, and did not obtain employment or housing in Utah, we conclude that no prejudice resulted from any claimed deficiency in cross-examination.

J.D.'s claim that trial counsel was deficient in failing to call a shelter mother to testify that he had telephone contact with his oldest child until May 2005 is also without merit. First, the testimony would largely have been cumulative of J.D.'s own testimony and that of the caseworker. Second, no prejudice resulted from not including the testimony. J.D. claims the testimony would rebut findings that he made only token efforts to visit or contact his children and he had not seen the children since February 2005. Even assuming, for purposes of appeal, that the evidence established some telephonic contact through May 2005, its omission was not prejudicial. The court terminated J.D.'s parental rights on the additional grounds of unfitness, failure of parental adjustment, and failure to remedy the circumstances that caused the children to be in an out-of-home placement, with no substantial likelihood that he would be capable of exercising proper and effective parental care in the

near future. "The State need only prove one ground for . . . parental rights to be terminated." In re J.N., 960 P.2d 403, 411 (Utah Ct. App. 1998); see also Utah Code Ann. § 78-3a-407 (2002). Given the unchallenged grounds for termination, there is no likelihood that the result would have been more favorable if the testimony of this additional witness had been included.

We affirm the decision to terminate J.D.'s parental rights.

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Russell W. Bench,  
Presiding Judge

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge